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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,112	08/29/2003	John Underbrink	001148CON	1842
26285	7590	03/30/2004	EXAMINER	
KIRKPATRICK & LOCKHART LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222			HUYNH, KHOA D	
		ART UNIT	PAPER NUMBER	
			3751	

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/652,112	UNDERBRINK ET AL. 
	<b>Examiner</b>	<b>Art Unit</b>
	Khoa D. Huynh	3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 29 August 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,16,17 and 514 is/are rejected.
- 7) Claim(s) 4,15 and 18-20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 August 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All
    - b) Some \*
    - c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/29/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the retainer comprises one or more detents as recited in claim 12, and the spring as recited in claim 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "means for supporting" as recited in claim 6, "a mounting means" as recite in claim 9, and "the retainer comprises one or more detents for retaining the faucet assembly in the folded position" as recited in claim 12.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5-11, 13, 16 and 17, as presently understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Polakoff et al. (449,430).

Regarding claims 1, 6 and 7, the Polakoff et al. reference discloses a sink (Fig. 6). The sink includes a basin (D) and a faucet assembly (Fig. 6) having a

discharge neck (at H) coupled to a faucet housing (Fig. 5) that is movably support on the basin and selectively rotatable between an upright position and a folded position (Fig. 6).

Regarding claim 2, the faucet assembly also includes a flow control valve (about H').

Regarding claim 3, as schematically shown in Figure 6, the faucet assembly is located completely below the plane when in the folded position.

Regarding claim 5, the basin further includes a retainer (about O in Fig. 1) that releasably retains the faucet assembly in the folded position (page 2, left col., lines 40-42).

Regarding claim 8, the sink further includes a flow control valve (about H') coupled to the discharge neck and a supply conduit (E,E'') coupled to the control valve via the discharge neck.

Regarding claim 9, the Polakoff et al. reference discloses a sink (Fig. 6). The sink includes a basin (D), a faucet assembly (Fig. 6) having a discharge neck (at H), a handle (the lever portion of element H'), and a faucet housing (Fig. 5) supporting the discharge neck on the basin. A mounting means (Fig. 10) that allows the faucet assembly to be pivoted through an angle of approximately 90 degrees about a horizontal axis that is defined by the mounted means (Fig. 6).

Regarding claim 10, the basin also includes a drain (about D').

Regarding claims 11 and 12, the basin further includes a retainer (about O in Fig. 1) that releasably retains the faucet assembly in the folded position (page

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2, left col., lines 40-42). The retainer is a detent (the bolt and spring mechanism) which is used to hold the faucet assembly in the folded position.

Regarding claims 13 and 14, the faucet assembly also includes a flow control valve (about H'). The control valve includes a connector (the bulging portion of the valve) for receiving one end of the discharge neck as shown in Figure 6.

Regarding claim 16, the sink further includes a supply conduit (E,E").

Regarding claim 17, as schematically shown in Figure 6, the faucet assembly is pivoted between an upright position and a lower position.

#### ***Allowable Subject Matter***

4. Claims 4, 15 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-9, 11-13, 16 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,611,972. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims anticipate the pending claims and anticipation is the epitome of obviousness.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holzer, Hyde and Stewart were cited to show a pivot-mounting faucet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (703) 306-5483. The examiner can normally be reached on M-F (7:00-4:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Khoa D. Huynh  
Patent Examiner  
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HK  
03/29/2004